

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

561P0458

SENATE BILL NO. 71

Introduced by: Senators Kloucek, Garnos, Gray, and Maher and Representatives Ahlers, Bradford, Feinstein, Gassman, Halverson, Lucas, Novstrup (Al), Sigdestad, Street, and Van Norman

1 FOR AN ACT ENTITLED, An Act to establish a rural community-based energy development
2 program.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "C-BED project" or "community-based energy development project," a new wind
6 energy project that:

7 (a) Has an ownership structure as follows:

8 (i) For a C-BED project that consists of more than two turbines, is owned
9 by qualified owners with no single qualified owner owning more than
10 fifteen percent of the project and with at least thirty-three percent of the
11 power purchase agreement payments flowing to the qualified owner or
12 owners or local community; or

13 (ii) For a C-BED project that consists of one or two turbines, is owned by
14 one or more qualified owners with at least thirty-three percent of the



1 power purchase agreement payments flowing to a qualified owner or
2 local community; and

3 (b) Has a resolution of support adopted:

4 (i) By the county board of each county in which the C-BED project is to
5 be located; or

6 (ii) By the tribal council for a C-BED project located within the boundaries
7 of an Indian reservation;

8 (2) "Electric utility," an electric supplier that:

9 (a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt or larger
10 transmission lines in South Dakota;

11 (b) Owns more than two hundred megawatts of electric generating facilities; and

12 (c) Has the obligation to directly serve more than two hundred megawatts of
13 wholesale or retail electric load in South Dakota; and

14 (3) "Qualified owner," any of the following:

15 (a) A South Dakota resident;

16 (b) A limited liability company that is organized under the Limited Liability
17 Company Act and that is made up of members who are South Dakota
18 residents;

19 (c) A South Dakota nonprofit corporation;

20 (d) An electric supplier, including any legal entity supplying, producing, or
21 distributing electricity within the state for sale at wholesale or retail, except
22 that ownership in a single C-BED project is limited to no more than:

23 (i) Fifteen percent by a single electric supplier; and

24 (ii) A combined total of twenty-five percent ownership by multiple electric

1 suppliers; or

2 (e) A tribal council.

3 Section 2. A C-BED project developer and an electric utility may negotiate in good faith
4 mutually agreeable power purchase agreement terms. A qualified owner or any combination of
5 qualified owners may develop a C-BED project with an equity partner that is not a qualified
6 owner, if not more than sixty-seven percent of the power purchase agreement payments flow
7 to the nonqualified owners. Except for an inherited interest, the transfer of a C-BED project to
8 any person other than a qualified owner is prohibited during the initial ten years of the power
9 purchase agreement. A C-BED project that is operating under a power purchase agreement is
10 not eligible for any applicable net energy billing. A C-BED project is subject to approval by the
11 Public Utilities Commission or shall receive certification as a qualifying facility in accordance
12 with the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq., as
13 amended to January 1, 2008, with written notice of the certification provided to the Public
14 Utilities Commission.

15 Section 3. An electric utility shall:

- 16 (1) Consider mechanisms to encourage the aggregation of C-BED projects located in the
17 same general geographical area;
- 18 (2) Require any qualified owner to provide sufficient security to assure performance
19 under the power purchase agreement; and
- 20 (3) Annually prepare a statement summarizing its efforts to purchase energy from
21 C-BED projects, including a list of the C-BED projects under a power purchase
22 agreement and the amount of C-BED project energy purchased.

23 Section 4. The governing body of an electric utility that has determined a need to construct
24 new renewable generation facilities shall take reasonable steps to determine whether one or

1 more C-BED projects are available and are technically, economically, and operationally feasible
2 to provide some or all of the identified generation need.

3 Section 5. To the extent feasible, a C-BED project developer shall provide, in writing, an
4 opportunity to invest in the C-BED project to each property owner on whose property a turbine
5 is located.

6 Section 6. Nothing in this Act obligates an electric utility to enter into a power purchase
7 agreement under a C-BED project.

8 Section 7. An electric supplier as defined in subdivision (3) of section 1 of this Act may
9 agree to limit its exercise of the power of eminent domain to acquire a C-BED project that is
10 a renewable energy generation facility producing electricity with wind and any related facilities
11 if such electric supplier enters into a contract to purchase output from the facility for a term of
12 ten years or more.